the accident occurred was clearly within the knowledge of the respondent and, in my view, the principle of *res ipsa loquitur* having been established, it was for the respondent to provide some explanation as to how the accident had occurred, and to negative the allegation of negligent driving.

I would allow the appeal with costs and remit the case to the learned trial Judge for him to hear evidence upon the issue as to the quantum of damages.

Neal J. concurred.

Appeal allowed.

Solicitors: *Cheang Lee & Ong; Cheah Theam Swee & Co.*

TEJA SINGH v. RATTAN SINGH

[C. A. (Thomson C.J., Rigby and Neal JJ.) September 14, 1960]

[Ipoh — F.M. Civil Appeal No. 54 of 1960]

Moneylending — Account — Non-production of, when originating summons was issued — Moneylenders Ordinance, 1951, s.21.

In this case a moneylender lent $2,000 to the respondent and by way of security took a bill of sale over certain cattle, it being a condition that the cattle should be kept in a specified locality. He alleged that the cattle had been removed from this locality, and he commenced proceedings for the enforcement of his bill of sale. Counsel for the respondent took a preliminary point that the proceedings were bad *ab initio* for want of compliance with a number of provisions of the Moneylenders Ordinance including those of section 21.

Held: non production of the account prescribed by section 21(1) of the Ordinance when the Originating Summons was issued was fatal to any subsequent proceedings on that summons.

Cases referred to:—

(1) *Ramasamy Chettiar* v. *Wong Poh Fatt* [1960] M.L.J. 43.

(2) *Arjan Singh* v. *Hashim Angullia & Ors.* [1941] M.L.J. 55.

COURT OF APPEAL.

Peh Swee Chin for the appellant.

S. A. Lingam for the respondent.

Thomson C.J. (delivering oral judgment): This appellant is a moneylender and it was his case that he lent a sum of $2,000 to the respondent and by way of security took a Bill of Sale over certain cattle, it being a condition that the cattle should be kept in a specified locality somewhere in the neighbourhood of Tanjong Rambutan. He alleged that the cattle had been removed from this locality, although incidentally he omitted to allege that they had been so removed fraudulently, and he commenced proceedings for the enforcement of his Bill of Sale.

These proceedings were proceedings taken by a moneylender for the enforcement of a security taken after the commencement of the Moneylenders Ordinance in respect of money lent. I see no reason to doubt that they fall fairly and squarely within these words which I have read from section 21 of the Ordinance.

The matter was commenced by way of Originating Summons and first of all came before the Judge in Chambers. It was then adjourned into open Court, and whatever the technical position be as regards the rights of the parties it seems to be agreed that both parties had it in mind to tender a certain amount of oral evidence.

When the matter came on in Court, counsel for the moneylender took certain pre iminary points which I do not think it is necessary to deal with here; and then counsel for the victim also took certain preliminary points, one of which was that the whole proceedings were bad *ab initio* for want of compliance with a number of provisions of the Moneylenders Ordinance including those of section 21.

In the event the Judge dealt with these points and without giving the parties any further opportunity to be heard dealt with the matter by dismissing the Originating Summons.

It is against that decision that the appellant has now appealed.

For myself I do not consider it necessary to examine the grounds of appeal in detail. The law in this country is perfectly well-settled and has been settled since as long ago as 1941. It is no case of a moneylender being taken by surprise by a new technical defence. The law has been well known to the moneylending community since 1941 and was discussed as recent y as 1956 in the case of *Ramasamy Chettiar* v. *Wong Poh Fatt*(1) where Pretheroe J., after referring to the decision of Terrell J., in the earlier case of *Arjan Singh* v. *Hashim Angullia & Ors.*(2) held (I am reading from the headnote):—

> "When a moneylender embarks on any proceedings in any Court, a statement of his account as prescribed by section 21(1) of the Moneylenders Ordinance, 1951, must be produced at the time the Originating Summons was filed. Non-compliance with this statutory requirement is an irregularity which the Court cannot waive and will entitle the respondent to have the Originating Summons dismissed with costs."

It is beyond doubt that this case falls clearly within these words. The account was not produced when the Originating Summons was issued and that was fatal to any subsequent proceedings on that summons. In the circumstances I am disposed to go no further than to say that the appeal should be dismissed on that ground with costs. The deposit in Court should be paid out to the respondent against his taxed costs.

Rigby and **Neal JJ.** concurred.

Appeal dismissed.

Solicitors: *Wahab, Singh & Peh; S. A. Lingam.*